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T. M. Pittman. Atty.

RULES OF PRACTICE

OF THE

UNITED STATES

Circuit and District Courts

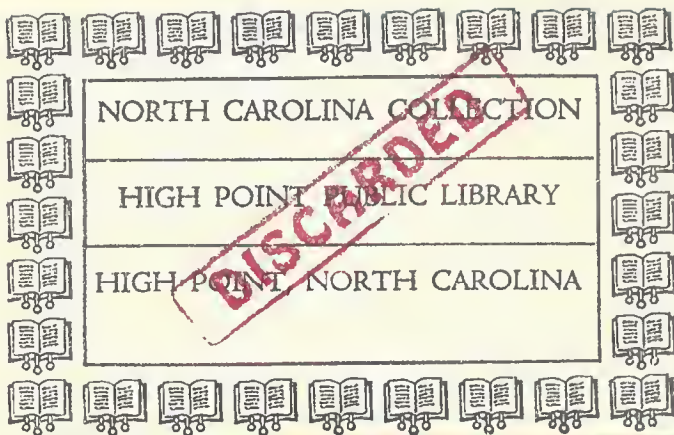
OF

NORTH CAROLINA.

GREENSBORO:

Thomas, Reece & Co., Steam Power Printers.

1886.



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BAR MEETING OF THE U. S. CIRCUIT COURT.

At the October Term, 1885, of the United States Circuit Court held at Greensboro, N. C., His Honor, Hugh L. Bond, Judge of the Circuit Court, suggested to the Bar the propriety of calling a meeting and having a Committee appointed to draft a set of Rules for Civil Practice in the United States Circuit and District Courts for North Carolina.

On the adjournment of the Court, the Bar assembled, and

"On motion of Judge D. Schenck, the Hon. Thomas Ruffin was called to the chair.

"Robert B. Glenn, Esq., of Winston, offered the following resolution:

"*Resolved*: That the Chairman recommend to the Court a Committee of six to prepare Rules of Civil Practice for the Circuit and District Courts of North Carolina. Adopted.

"The following gentlemen were appointed by the Chairman to constitute said Committee:

"Judge D. Schenck, *Chairman*; C. B. Watson, of Winston; Gen R. D. Johnston, of Charlotte; Col. W. S. Ball, of Greensboro; Jno. W. Hindsdale and Samuel F. Mordecai, of Raleigh."

REPORT OF COMMITTEE ON RULES.

At the June Term, 1886, of the Circuit Court, held at Charlotte, North Carolina, the Hon. Morrison R. Waite, Chief Justice of the United States, presiding, with his associates, the Hon. Hugh L. Bond, U. S. Circuit Judge, and Hon. Robert P. Dick, U. S. District Judge, the Committee on Rules reported as follows:

To the Honorables, the Judges of the Circuit and District Courts of the United States in North Carolina:

The undersigned, Chairman of the Committee on "Rules of Practice in the Circuit and District Courts of North Carolina," respectfully reports:

IV.

That at the suggestion of the Hon. Hugh L. Bond, Judge of the Circuit Court, the Bar held a meeting at Greensboro, N. C., at the October Term of the Circuit Court of the United States, and passed the following Resolution:

"Resolved. That the Chairman recommend to the Court a Committee of six to prepare Rules of Practice for the Circuit and District Courts of North Carolina."

In pursuance of the said resolutions, and by the approval of the Court, the undersigned, as Chairman, and C. B. Watson, R. D. Johnston, W. S. Ball, J. W. Hinsdale and Sam'l F. Mordecai were appointed as the Committee on Rules.

The Committee met, at the call of the Chairman, at Greensboro, and sat for several days, and having collected copies of the Rules of various States, and carefully considered those in force in North Carolina, *unanimously* adopted the following Rules of Practice, which are respectfully submitted for the approval of the Court.

Rules 7 and 13 were inserted by the direction of the Hon. Hugh L. Bond to the Chairman; these Rules having been settled by him after argument at the October Term, 1886.

D. SCHENCK,
Chairman.

June 14th, 1886.

The Court having considered the Rules submitted, and modified the same in some particulars, and adopted them as modified, they were presented for further action to the Hon. Robert P. Dick, United States District Judge, on Rule day at Greensboro, N. C., on Monday, July the 5th, 1886, when the following order was made:

ORDER OF THE COURT.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

IN RE
RULES FOR THE CIRCUIT AND DISTRICT COURTS OF NORTH
CAROLINA.

The Committee on Rules having reported to the Circuit Court of the United States, sitting at the June Term, 1886, at Charlotte, North Carolina, and a printed copy of the Rules having been considered and examined by the Hons., the Chief Justice of the United States, Hugh L. Bond, Judge of the Circuit Court, and Robert P. Dick, Judge of the District Court, and the same having been modified as indicated by the interlineations in the copy marked "A," hercunto attached, and the same, as modified, having been adopted and left with the Hon. R. P. Dick, U. S. District Judge, for the further order of the Court as to the printing and distribution of copies thereof,

It is now ordered by the Court that David Schenck, Chairman of the said Committee on Rules, have five hundred copies of said Rules neatly and correctly printed at as early a date as possible, and that ten copies thereof be filed with each of the Clerks of the respective United States Courts in North Carolina for safe keeping. That a copy each be furnished the Chief Justice of the United States, and the United States Circuit and District Judges in North Carolina, and to the United States District Attorneys and their assistants, and to as many of the members of the Bar as practicable, who practice in the United States Courts in North Carolina.

VI.

That a copy each be supplied to the Supreme and Superior Court Judges in North Carolina, and the Attorney General of the State, and two copies to the State Library.

That the original modified copy, ordered to be printed, marked A, be filed with the Clerk of the United States Court at Greensboro for safe keeping and for reference.

ROBT. P. DICK,
U. S. Judge.



NOTE. ERRATA.

Page 10 insert "upon questions of law," in Rule 15, line 5, after the word "charges," and strike out the words following, to-wit: "in writing."

Page 13, Rule 26, line 6, strike out after the word "and," the words "within five days."



RULES OF PRACTICE
OF THE
United States Circuit & District Courts
FOR THE
DISTRICTS OF NORTH CAROLINA.

ATTORNEYS AND COUNSELORS.

RULE 1. No person shall be admitted to practice as an attorney or counselor of this Court unless he shall have been previously admitted in the Supreme Court of the United States, or the Supreme Court of this State, or the highest Court of a sister State, or of an organized territory of the United States. Satisfactory evidence of good moral character will be required. The applicant, upon his admission, shall sign the roll of attorneys and counselors, and take and subscribe the following oath, to-wit:

Attorneys, who admitted.

"I solemnly swear [or affirm] that I will support the
"Constitution of the United States; that I will bear
"true faith and allegiance to the Government of the
"United States; that I will maintain the respect due to
"the Courts of justice and judicial officers; and that I
"will demean myself as an attorney and counselor of
"this Court uprightly."

Oaths.

RULE 2. No agreement between parties or their attorneys, in relation to the proceedings or evidence in an action, will be regarded unless the same is made in open Court, and noted in its minutes, or is reduced to writing and subscribed by the party or attorney against whom it is alleged.

Agreements between parties or attorneys to be in writing.

But no cause
dismissed
without notice

Motions heard
at chambers or
term-time.

respects, as is required for commencing an action in the Circuit Court; but no cause shall be dismissed until the defendant shall serve a notice in writing on the plaintiff, or his attorney, at least thirty days beforehand, of a motion to dismiss, either for want of an undertaking, or for want of a solvent undertaking, as required. All motions to dismiss may be heard either at chambers or at term time.

MOTION FOR FULL BENCH.

Motion for Full
Bench.

RULE 14. In all civil causes in the Circuit Court, involving twenty-five hundred dollars, or more, either party shall, on motion, be entitled to have a full bench, and the cause shall be continued, at least one term, for that purpose. Notice of such motion must be served on the opposite party ten days before the term. If necessary to effect the purposes of this section, the cause shall be removed from one place of holding the Court to another.

CHARGE OF THE JUDGE.

Prayer for In-
structions.

Court to submit
charge to
counsel.

Jury may take
instructions
with them.

RULE 15. At the trial of every cause, the counsel on either side shall, before argument, submit to the Court such prayer for instructions as may be desired, and argue the same by the permission of the Court; and the Court will then submit its charges, ~~in writing~~, to the counsel for their guidance, in their addresses to the jury; and at the request of either party the Judge will allow the jury to take his instructions with them on their retirement, and the jury shall return the same to the Court with their verdict.

OPENING AND CLOSING.

When defend-
ant's counsel
may open and
close.

RULE 16. In all cases, civil or criminal, where no evidence is introduced by the defendant, his counsel shall have the right to open and conclude in his address to the jury.

RULE 17. In all cases when any evidence is introduced by the defendant, and the affirmation of any material issue is upon the plaintiff, the plaintiff's counsel shall have the right to open and close to the jury.

When plaintiff's counsel may open and close.

REMOVALS TO ANOTHER COURT.

RULE 18. Upon the affidavit on the part of a plaintiff or defendant, showing good cause, the Judge may remove a cause from one place of holding Court to another.

Parties may remove from one Court to another.

PROVISIONAL REMEDIES.

RULE 19. In provisional remedies and ancillary and supplementary proceedings, the Clerks of this Court shall have the powers, as near as may be, which are conferred upon Clerks of the Superior Courts by the laws of North Carolina.

In provisional remedies, etc., Clerks to have powers of Superior Court Clerks.

DEPOSITIONS.

RULE 20. Depositions may be taken, opened and read in evidence under such rules and regulations as are prescribed by the laws of North Carolina, or of the United States.

Depositions governed by laws of N. C. and U. S.

PROTECTION OF INFANTS.

RULE 21. In no case shall the Court make or sign any order, decree or judgment directing the payment of any money or securities for money belonging to any infant, to any person, until it shall first appear that such person is entitled to receive the same and has given the bonds required by law in that respect, and such payment shall be directed only when such bonds as required by law shall have been given and accepted by competent authority.

No money to be paid for infant to any person except bond given, etc.

Guardian or next
friend.

RULE 22. In all cases where it is proposed that infants shall sue by their next friend, the Court shall appoint such next friend upon the written application of a reputable disinterested person closely connected with such infant; but if such person will not apply, then upon the like application of some reputable citizen, and the Court shall make such appointment only after due inquiry as to the fitness of the person to be appointed.—*Young vs. Young*, 91 N. C. 359.

PAYMENT OF FEES TO CLERK.

Clerk entitled to
fees before is-
suing process;

also \$10.00 de-
posit from
plaintiff;

and like deposit
from defend-
ant;

and another
deposit from
each.

Parties may re-
ceive back
overplus.

RULE 23. Upon the commencement of any proceeding in Court, the Clerk is entitled to demand and receive from the plaintiff therein the payment of the fees for issuing process, including the necessary copies, and in addition thereto a deposit of ten dollars as security for any further sum for which such plaintiff may become liable; and upon the appearance of the defendant or defendants in any such proceeding, the Clerk shall be entitled to demand and receive from him or them a like deposit; and if at any time the amount of the fees for services rendered either party shall equal the deposit made by him, the Clerk shall thereafter be entitled to demand and receive another like deposit, or to be paid for his services as they are performed. At the termination of the proceedings, a party making deposit as security for fees, shall be entitled, on demand, to receive back from the Clerk any balance due him after deducting whatever is due such Clerk.

PEREMPTORY CALL OF DOCKET.

Call Civil Docket
Circuit Court,
Tuesday, sec-
ond week.

RULE 24. The peremptory call of the civil docket in the Circuit Court shall not take place before Tuesday of the second week of the term.

EXCEPTIONS.

RULE 25. A party excepting to the charge of the Court to the jury must distinctly specify in writing the particular matter or omission to which he excepts. An exception taken to a ruling of the Court during the progress of a trial must specify the ground thereof, and no exception other than the one taken as herein provided will be allowed.

Exceptions to charge to be specific.

RULE 26. When an exception is taken, the party taking the same must prepare, in due form, a bill of exceptions, and deliver it to the Clerk, for the Judge, and serve a copy thereof on the attorney of the adverse party, who may, in like manner deliver and serve amendments thereto, and ~~within five days~~ thereafter the party taking the exception may serve a notice upon the attorney of the adverse party, to the effect that he objects to the amendments, and will, apply to the Judge, at his chambers, to settle and sign the bill of exceptions.

Bills of exceptions to be delivered to Clerk and served upon adverse attorney, etc.

RULE 27. A proposed bill of exceptions and the amendments thereto, if any, are to be considered and submitted to the Judge for examination and allowance, without any further notice or action by either party, whenever, according to Rule 26, such bill or bill and amendment, is to be taken as assented to by the adverse party; and when the same is found or made to conform to the facts, it will be allowed and signed by the Judge and directed to be filed.

When assented to under Rule 26, exceptions submitted to Judge without further notice.

APPEALS AND WRITS OF ERROR.

RULE 28. Whenever an appeal to this Court has been made and perfected from a final decree of the District Court, the appellant shall, within five days thereafter, file in this Court a certificate thereof under the seal of the District Court, and upon such certificate being filed the Clerk of this Court shall enter the appeal upon the

Appeals, when to be entered on docket.

docket, and then receive and hold the moneys theretofore remaining in the District Court in the cause.

Appeals when
deemed aban-
doned.

RULE 29. In case such certificate of appeal shall not have been filed, the appellees may at any time after the expiration of the said five days, receive from the Clerk of this Court a certificate that no such appeal has been entered; and upon such certificate being filed in the District Court, the appeal shall be deemed abandoned, and the cause be deemed remitted for further proceedings in the District Court.

Plaintiff in error
to give security

RULE 30. On suing out a writ of error to the District Court, and before the Clerk seals the same, the plaintiff in error (other than the United States) shall file security with two or more sureties, to be approved by one of the Judges of the Court (in the sum of three hundred dollars, when the writ of error does not operate as a *superseas*) conditioned to prosecute his writ of error to effect, and answer all costs awarded against him.

Writ of Error,
when return to
be made there-
to.

RULE 31. The Clerk of the District Court shall forthwith make return to a writ of error, by transmitting a certified copy of the record and all proceedings in the cause, (including the bill of exceptions, when one has been signed by the Judge and filed by the party) and a copy of the opinion of the Judge, if there be one, under the seal of the Court.

Certiorari for
diminution,
when allowed.

RULE 32. No *certiorari* for diminution shall issue, without the consent of the adverse party, or the affidavit of the party applying, showing reasonable cause for alleging diminution, and in what such diminution consists; nor shall it be allowed after the cause has been called for trial or argument, except for special reasons, and upon such terms as the Court may impose.

Plaintiff in error
may proceed
ex parte,
when.

RULE 28. In every cause in which the defendant in error fails to appear, the plaintiff in error may proceed *ex parte*.

RULE 34. When a bond with sureties is approved by the Judge and filed, the Clerk may seal a writ of error, without mandate or allowance of the Judge.

Writ of Error,
when may is-
sue.

PAPERS FOR FILING, ETC.

RULE 35. Papers presented to the Clerk for filing, shall be endorsed with the style of the suit, and written in a legible manuscript, or printed; otherwise, the Clerk may refuse to receive or file them. The Clerk shall endorse the papers "filed," with the date; and no notice will be taken of the papers not so endorsed.

Style of suit
must be en-
dorsed on pa-
pers for filing,
etc.

DIVISION OF OPINION, ETC.

RULE 36. In cases of division of opinion between the Judges on points of law, the Court, at the instance of either party, will forthwith note such points in writing.

Court to note
division of
opinion at in-
stance of
either party.

TRANSCRIPT UPON REMOVAL FROM STATE COURT.

RULE 37. When the party removing a cause into this Court from the Courts of the State shall fail to file his complete and perfect transcript within the time limited by law, the adverse party may himself file such transcript; and thereupon the cause shall proceed as if such transcript had been filed by the proper party within the time limited, and the cost of such transcript shall be taxed against the party in fault.

Party removing
cause from
State Courts
failing to file
transcript, the
adverse party
may do so, at
cost of party
removing
cause.

In all causes removed to this Court from a State Court on application from the defendant, where such action in the State Court is being prosecuted by the plaintiff therein in *forma pauperis*, by leave of such State Court in accordance with the Statute of North Carolina, the same may be prosecuted in this Court to judgment without giving the undertaking or making the

deposit as required by the rules of this Court, if it appears to this Court by the affidavit of the plaintiff that he is still unable to give the undertaking or to make the deposit. But this shall not prevent the officers of this Court from demanding and receiving in advance from said plaintiff the fees for service as such officers in behalf of such plaintiff.

RULE 38. All Rules of the Circuit and District Courts inconsistent with the foregoing Rules are repealed from and after June 15, 1886.

